

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION



In re:) Chapter 13
Emily Carol Beckham,)
) Case No. 01-31745
)
Debtor.)
_____)

JUDGEMENT ENTERED ON JAN 23 2002

ORDER DISMISSING DEBTOR'S CHAPTER 13 CASE

This matter is before the court on the court's Order in Substitution of Order Dated October 31, 2001, wherein the court set a hearing to determine if dismissal or reinstatement of the debtor's plan is appropriate and requiring the debtor to produce documentation or other substantiation of allegations contained in her Motion to Reopen Case. A hearing was held on January 16, 2002. For the reasons stated below, the court has concluded that dismissal of the debtor's Chapter 13 case is appropriate.

Jurisdiction

1. Jurisdiction is proper pursuant to 28 U.S.C. §§ 157 and 1334.

2. This matter came before the court after proper notice, and all parties are properly before the court.

Factual Background

3. The debtor filed a voluntary petition for Chapter 13 bankruptcy protection and a Chapter 13 plan on June 26, 2001.

4. Subsequent to filing a Chapter 13 petition on behalf of the debtor, the debtor's attorney provided the debtor with

payment envelopes addressed to the Chapter 13 Trustee and stickers, indicating her name, address, and case number, to affix to those envelopes to ensure proper credit.

5. In a letter dated July 30, 2001, the debtor was notified by her attorney that she was required to make a first money payment.

6. On August 7, 2001, the first meeting of creditors in debtor's Chapter 13 case was held. Debtor advised the Chapter 13 Trustee that she had delivered a money order for her payment of first money to her attorney's office.

7. In a letter dated August 10, 2001, debtor was notified by her attorney's office it had no record of having received the debtor's first money payment.

8. In correspondence dated August 15, 2001, the Chapter 13 Trustee notified the debtor that her case was subject to dismissal pursuant to 11 U.S.C. § 1326(a) due to a failure to make a first money payment within thirty days of filing the debtor's Chapter 13 plan.

9. On August 28, 2001, an order dismissing the debtor's Chapter 13 case was entered.

10. On or about October 21, 2001, the debtor's car was repossessed.

11. On October 31, 2001, the debtor, represented by another lawyer, filed a motion to reopen her case in which she swore under oath that:

(a) she had escrowed a \$270.00 first money payment with the the attorney who had originally represented her; and

(b) these funds were to be presented at her first meeting of creditors; and

(b) she, upon notification from her attorney that he had been unable to find the funds, had advanced another \$270.00 to him; and

(c) her attorney had failed to forward these monies to the Chapter 13 Trustee.

12. On October 31, 2001, an ex parte order was entered granting debtor's motion to reopen her case which set forth the debtor's allegations as findings of fact.

13. The court met with both the movant and the respondent on November 13, 2001. After that meeting, the court entered an order striking its October 31, 2001, order and setting a hearing to determine whether the debtor's case should be dismissed or reinstated and ordering the debtor to provide documentation or other substantiation of her allegations.

14. On November 14, 2001, the court ordered that the debtor's first money was to be paid by November 30, 2001, or the case would be dismissed.

15. On January 16, 2002, the debtor appeared before the court but was unable to produce a receipt or other evidence of payment made to her attorney's office or to the Chapter 13 Trustee between the date of her petition, June 26, 2001, and the date her case was dismissed, August 28, 2001.

16. At the January 16, 2002, hearing, the debtor was able to substantiate that she purchased a money order on September 13, 2001, approximately two weeks after the dismissal of her Chapter 13 case. That money order was made payable to the Chapter 13 Trustee but was not delivered to the Trustee. It was cashed by the debtor.

17. As of January 14, 2002, the debtor had made one payment to the Trustee on the debtor's Chapter 13 plan. This payment was credited on November 14, 2001.

Discussion

18. Section 1326(a)(1) requires a Chapter 13 debtor to begin making payments proposed by the debtor's plan within thirty days of filing the plan. Should a debtor fail to make a first money payment within thirty days of filing, the debtor's case is subject to dismissal or conversion pursuant to Section 1307(c).

19. Here, the debtor claimed to have escrowed two first money payments with the attorney she hired to assist her with filing her petition and preparing her Chapter 13 plan. The court does not find the debtor credible in this regard. In fact, there

is no indication that any plan payments were made until November 14, 2001, more than four months after her Chapter 13 plan was filed with the court.

20. The court concludes that the debtor's original attorney and his office staff provided ample, credible evidence that the debtor was informed of the importance of making a first money payment in a timely manner. Moreover, the debtor's attorney provided the debtor with payment envelopes and identification stickers to use when mailing plan payments to the Trustee.

21. Nevertheless, despite having been advised by the Chapter 13 Trustee that her case was subject to dismissal for failure to make a first money payment, the debtor did not forward a payment to the Trustee. The debtor's case was, therefore, dismissed.

22. Once the debtor's case was dismissed, she lost the protection of the automatic stay codified in 11 U.S.C. § 362. The predictable result was that the debtor's car was repossessed. After this occurred, the debtor began to seek reinstatement of her Chapter 13 case and engaged another lawyer to represent her.

23. In her motion for reinstatement and the ex parte order that granted that motion, the debtor set forth allegations that her first attorney had misplaced not one but two Chapter 13 plan payments the debtor claimed to have escrowed with him. However, the debtor has not claimed--either by motion or by her testimony--

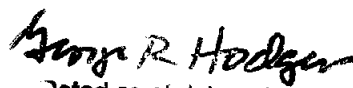
-that she mailed or otherwise delivered plan payments to the Chapter 13 Trustee. Again, the only payment the Trustee received toward this debtor's plan was made on November 14, 2001. Significantly, this payment was made upon the court's order that first money be paid by November 30, 2001, or the case would be dismissed again.

24. Because the debtor has made no payments toward her Chapter 13 plan other than that of November 14, 2001, the court concludes that this case should be dismissed pursuant to the court's order of December 12, 2001, and the debtor's default.

Conclusion

For the above stated reasons, the court declines to reinstate the debtor's Chapter 13 case.

It is, therefore, ORDERED that this case is DISMISSED.


Dated as of date entered.

George R. Hodges
United States Bankruptcy Judge